

MICHIGAN SUPREME COURT



Office of Public Information

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ASBESTOS DOCKET PROPOSAL ON SUPREME COURT'S MAY 24 PUBLIC HEARING AGENDA; COURT SEEKS COMMENTS

Agenda includes proposed application of Michigan Child Support Formula to reimbursement orders in juvenile cases

LANSING, MI, May 23, 2006 – Two alternative proposals for a consolidated asbestos docket will be aired at the Michigan Supreme Court's public hearing on May 24.

The hearing will start at 9:30 a.m. in the Supreme Court courtroom on the 6th floor of the Michigan Hall of Justice; the hearing will adjourn no later than 11:30 a.m.

Each alternative would apply "to all asbestos-related disease personal injury actions pending or to be filed in Michigan courts," the proposals state.

Both proposals provide that asbestos actions must be transferred to the Wayne County Circuit Court; parties have 14 days after the transfer to object to the change.

Alternative A would create an "active docket" and an "inactive docket" for all asbestos cases transferred to Wayne County Circuit Court. A case "shall be placed on the active docket only if 1) a physician certifies that the plaintiff's alleged injury is related to asbestos exposure, or 2) "[t]he plaintiff files materials satisfying the [American Bar Association (ABA)] standard for nonmalignant asbestos-related disease claims." The ABA standards call for a "detailed Medical Report and Diagnosis signed by the diagnosing doctor," including a detailed medical history, a finding of "restrictive impairment," a chest x-ray, and lung function testing results. The diagnosing doctor must also conclude "that the claimant's medical findings and impairment were not more probably the result of other causes revealed by the claimant's employment and medical history."

All other cases would be placed on the "inactive docket," without further proceedings. Parties to a case on the inactive docket could voluntarily participate in discovery, although the court would not order it. A case may be transferred to the active docket on a party's motion if the case meets the active docket's requirements of a physician's certification or satisfaction of the ABA standards. The proposal further provides that "cases on the active docket shall not be joined with cases from the inactive docket for settlement or any other purpose."

Alternative B, which would also transfer asbestos cases to Wayne County Circuit Court, would create an active docket of "Tier I" and "Tier II" cases, plus a voluntary inactive docket.

“Tier I” cases must meet the same criteria that Alternative A would apply to “active docket” cases. Alternative B further provides that “All Tier I cases shall be resolved independently, either by judgment or dispositive order, before any Tier II case may be docketed for further proceedings, although the parties in a Tier II case voluntarily may engage in discovery.”

Under Alternative B, a plaintiff in a Tier II case may opt to have his or her case placed on an inactive docket. The case would remain on the inactive docket until transferred to the active docket or dismissed.

These proposals, and related public comments and other information, are available at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>. (**ADM File No. 2003-47**).

Also under consideration is a proposal that would adopt the Michigan Child Support Formula as the guideline for court-ordered reimbursement in juvenile proceedings, including child abuse and neglect cases. (**ADM File No. 2005-44**). Under the state’s Probate Code, courts must order a juvenile, or a juvenile’s parent, guardian, or custodian, to pay “for care and any costs of service” (MCL 712A.18(2)) if the child is placed in foster care; the court may order reimbursement for services provided to a child who remains in the home pursuant to MCL 712A.18(3). The Probate Code, MCL 712A.18(6), allows a court to use guidelines created by the State Court Administrative Office to set the amount the family must pay. The proposal would replace the current guidelines, which were adopted in 1990, with the state’s child support formula, which has been updated regularly. The proposal would also amend Michigan Court Rule (MCR) 3.973 to provide that, in a child protective proceeding, the court may order “one or both of the child’s parents to pay child support” and that the Court must use the Michigan Child Support Formula in calculating the amount.

The agenda also includes proposed revisions of MCR 5.104, 5.402, and 5.403 (**ADM File No. 2005-12**). MCR 5.104, which covers proof of service in probate court matters, would be amended to specifically address ex parte relief – orders affecting a person who did not attend or respond to the proceedings. Under the proposed amendment, a proof of service as to an ex parte order “must be filed as soon as possible after the court hears the request for relief and at the latest 10 days after the date of service or before a subsequent hearing on the matter, whichever period is shorter.” The proposed amendment to MCR 5.402(C) would require that a parent whose child is the subject of a petition must get personal service of the petition, if the parent can be located. MCR 5.403, which governs proceedings on temporary guardianships, would apply where the court appoints a temporary guardian for a minor and the minor’s parents do not attend the hearing. The proposed amendment would require the court to hold another hearing within 56 days; parents would have to be notified of the second hearing by personal service if they can be located. If not, service may be by first-class mail, publication, or as directed by the court.

Also on the agenda is a proposed amendment of MCR 8.110, the “Chief Judge Rule.” While the Supreme Court selects the chief judges for state trial courts, courts with two or more judges may propose at least two judges “whom the judges of that court recommend for selection as chief judge.” The amendment would change the deadline for such recommendations from October 1 to September 1 of each odd-numbered year. (**ADM File No. 2004-26**).

The Court regularly holds hearings as part of its public comment process for proposed court rules and other administrative matters, and invites members of the public to share their views on agenda items. Comments on these proposals may be sent to the Clerk of the Court by mail at P.O. Box 30052, Lansing, Michigan, 48909, or by e-mail at MSC_clerk@courts.mi.gov. Comments should include the ADM File Number of the proposal at issue. Comments may be posted on the Supreme Court's website.

The full text of these and other proposed administrative matters is available at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.

The public hearing agenda may be viewed at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/PH.htm>.

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